



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1993

Mr. Charles Karakashian, Jr.
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR93-112

Dear Mr. Karakashian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18546.

The Texas Department of Public Safety (the "department") has received a request for information relating to department use of social security numbers. Specifically, the requestor seeks:

information policies, memoranda, letters, rules, or regulations relating to:

1. Any requirement or request for social security numbers in order to obtain and/or renew a driver's license and;
2. Any use the department will make of the social security number.

You advise us that the department will release the rules and regulations concerning the taking and use of social security numbers as set forth in title 37 of the Texas Administrative Code, section 15.42. However, you have submitted to us for review several memorandums and letters responsive to the request and claim that they are excepted from required public disclosure by sections 3(a)(7), 3(a)(8), and 3(a)(11) of the Open Records Act.

We first address your claim that section 3(a)(8) excepts from required public disclosure the documents submitted to the department by the United States Department of Health and Human Services Social Security Administration (the "administration"). We note that you did not assert the section 3(a)(8) exception within the ten-day deadline, as required by section 7 of the Open Records Act. A governmental body may not raise additional exceptions after the ten-day deadline. Open Records Decision No. 515 (1988).

When a governmental body fails to raise an exception within the ten-day deadline, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. *See id.*

The presumption of openness can be overcome by a compelling demonstration that the information should not be released to the public because the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977). You have not asserted that the administration documents are confidential under state or federal law or regulations, nor are we aware of any such source of law. In Open Records Decision No. 586 (1991), this office determined that the law enforcement interests of a third party may overcome the presumption of openness arising from a failure to timely request a determination of this office. In that decision, a county district attorney sought to withhold information the release of which would undermine an ongoing investigation conducted by the Department of Public Safety and the United States Attorney's Office and would jeopardize future law enforcement cooperation with those agencies. Here, however, neither you nor the administration have indicated that release of the information would undermine an ongoing investigation or jeopardize future law enforcement cooperation. That release of the information would undermine the law enforcement interests of the administration is not apparent on the face of the documents submitted to us for review. We conclude that you have not made a compelling demonstration that overcomes the presumption of openness and that the documents submitted by the administration may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

You also claim that all of the information submitted to us for review is excepted from required public disclosure by sections 3(a)(7) and 3(a)(11) of the Open Records Act.¹ Section 3(a)(7) protects

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. [Footnote omitted.]

Section 3(a)(7) protects from required public disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice. Open Records Decision No. 574 (1990). Purely factual information, however, is not protected by section 3(a)(7). *Id.*

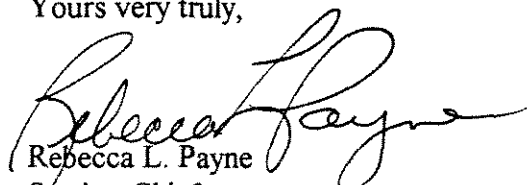
¹Your assertion of the section 3(a)(7) and section 3(a)(11) exceptions was made within the ten day deadline, as required by section 7 of the Open Records Act.

We have examined the documents submitted to us for review, which include a number of memorandums generated by the department's general counsel. We conclude that both memorandums dated April 2, 1990, and the memorandums dated December 2, 1982, April 11, 1990, October 25, 1991, June 26, 1992, September 21, 1992, November 11, 1992, and November 18, 1992, contain legal advice or opinion or reveal client confidences. A memorandum dated November 12, 1991, which was not generated by the department's general counsel, also contains legal advice or opinion or reveals client confidences. These documents also contain a limited amount of factual information not protected by the attorney-client privilege; however, the factual information is inextricably intertwined with information excepted by the attorney-client privilege. Accordingly, these documents may be withheld from required public disclosure in their entirety under section 3(a)(7) of the Open Records Act. The document dated December 19, 1991, contains limited information constituting legal advice or opinion which is not inextricably intertwined with factual information. This information has been marked and may be withheld from required public disclosure under section 3(a)(7). The remainder of the memorandum must be released. The remaining documents do not contain the legal advice or opinion of an attorney, nor do they reveal client confidences. Accordingly, this information may not be withheld under section 3(a)(7).

You also claim that some of the requested information is excepted from required public disclosure by section 3(a)(11) of the Open Records Act. You have failed, however, to indicate the specific information in the documents to which the section 3(a)(11) exception applies. *See* Open Records Decision No. 462 (1987) at 14. The custodian of records has the burden of proving that specific information is excepted from public disclosure. Attorney General Opinion H-436 (1974). If a governmental entity does not claim an exception or fails to show how it applies to the records, the entity waives the exception unless the information is deemed confidential by the act. *See* Attorney General Opinion JM-672 (1987). Because you have not demonstrated how the section 3(a)(11) exception applies to information in the documents submitted to us for review, we have no basis to conclude that any of the requested documents are excepted from required public disclosure by section 3(a)(11) of the Open Records Act. Except as indicated above, the requested information must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-112.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/MRC/GCK/le

Ref.: ID# 18546
ID# 18606
ID# 18795
ID# 18758

cc: Mr. J. Patrick Wiseman
Wiseman, Durst & Tuddenham
600 West 7th Street
Austin, Texas 78701-2710